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No. 07-976

IN THE
Supreme Court of the United States

T-MOBILE USA, INC., *ET AL.*,
Petitioners,

v.

JENNIFER L. LASTER, *ET AL.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR *AMICUS CURIAE* CTIA – THE WIRELESS ASSOCIATION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

CTIA – The Wireless Association ("CTIA") is the international organization of the wireless communications industry for wireless carriers and their suppliers. CTIA regularly advocates on behalf of its members in judicial, legislative, and regulatory matters.

Like petitioner T-Mobile USA, Inc. ("T-Mobile") — itself a CTIA member — CTIA members generally provide wireless communications services pursuant to uniform nationwide agreements. Those agreements regularly incorporate alternative dispute resolution provisions that rely on individual arbitration to resolve customer disputes, helping wireless carriers to continue to offer products and services at reduced rates and providing wireless consumers a quick and cost-effective method for resolving their disputes.

The decision of the Ninth Circuit in this case threatens to alter dramatically the way CTIA members conduct their business. By blessing the efforts of California and other States to advance anti-arbitration policies in contravention of federal law,

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[1] The parties have consented to the filing of this brief. Counsel for all parties have been given notice of the *amicus curiae*'s intention to file this brief as required by Supreme Court Rule 37.2(a). No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

the Ninth Circuit has undermined the utility of arbitration agreements and has cast uncertainty on the provisions contained in the contracts of hundreds of millions of wireless customers. The result will be higher costs and uncertainty for CTIA members and the threat of correspondingly higher rates for their customers. Accordingly, CTIA has a strong interest in making sure that this Court reviews, and ultimately reverses, the Ninth Circuit's decision here.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Ninth Circuit's decision undermines the Federal Arbitration Act ("FAA") and fosters a climate of hostility toward arbitration, imposing substantial and unnecessary costs on the hundreds of millions of customers that rely on wireless communications services. CTIA thus urges this Court to grant T-Mobile's petition.

I. The Ninth Circuit's decision is directly at odds with the FAA. As the Third Circuit correctly held in *Gay v. CreditInform*, 511 F.3d 369 (3d Cir. 2007), a categorical prohibition on individual arbitration provisions is inconsistent with the purposes of the FAA. Moreover, the text and history of the FAA make clear that Congress never intended for state policy judgments about what is substantively unfair to provide a ground for invalidating an otherwise proper arbitration clause. This case provides the Court with an opportunity not only to resolve the conflict between *Gay* and the decision below, but also

to clarify the limited role of state law in assessing the validity of arbitration clauses generally. If an arbitration clause is "valid" and "enforceable" once properly formed in a contract, then post-formation state law doctrines, such as substantive unconscionability, are expressly preempted by the FAA.

II. The Ninth Circuit's decision will have a sweeping impact on the wireless communications industry and on consumer businesses generally. First, virtually all members of the wireless industry — like those of many other industries — rely on alternative dispute resolution mechanisms to resolve disputes efficiently and to reduce costs for their customers. Individual arbitration clauses appear in hundreds of millions of subscriber contracts throughout the United States, and virtually all of those arbitration provisions are called into question if the Ninth Circuit's decision survives.

Second, the Ninth Circuit's decision will generate substantial and unnecessary litigation. The Ninth Circuit's decision directly conflicts with the Third Circuit's decision in *Gay*, and is sure to create widespread uncertainty and confusion. Wireless carriers will be forced to litigate Circuit by Circuit and State by State to determine when, under the FAA, state unconscionability law renders individual arbitration provisions unenforceable. Moreover, in those States in which individual arbitration clauses are foreclosed, class action litigation will multiply, and carriers will be forced to defend what are often

frivolous lawsuits that could be handled more efficiently and effectively through arbitration.

Third, the Ninth Circuit's decision unnecessarily ousts efficient market solutions. Wireless carriers operate in a highly competitive marketplace, resulting in better services at lower prices for consumers. In that market, there is a premium on maintaining customer loyalty — carriers have a substantial economic incentive to avoid losing customers. For that reason, most customer disputes are settled at the customer service level, and subscribers who take advantage of individual arbitration procedures are ordinarily satisfied with the outcome. Customers are happy, and the costs of dispute resolution are kept low. The Ninth Circuit's decision, however, forces carriers to abandon arbitration in favor of class action litigation. The result will be higher costs for carriers and customers alike, leaving the plaintiffs' bar as the only beneficiary.

Finally, the Ninth Circuit's intrusion is particularly inappropriate here, because wireless competition has generated arbitration clauses that provide substantial protections to customers. Wireless service contracts frequently contain arbitration cost-sharing mechanisms, permit consumers to elect to litigate in small claims court, and allow prevailing plaintiffs to pursue awards of attorneys' fees. Given these provisions, there is little likelihood that meritorious claims will be ignored or that wireless carriers will unjustifiably escape liability.

For all these reasons, review by this Court is urgently needed.

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant Review to Clarify the Scope of Permissible State Court Interference with Arbitration Clauses.

This Court should grant review not only to resolve the direct conflict between the decision below and the Third Circuit's opinion in *Gay*, but also to clarify the limited scope of the FAA's savings clause — which the Ninth Circuit plainly misconstrued. As the Third Circuit correctly held in *Gay*, a categorical prohibition on individual arbitration provisions is inconsistent with the purposes of the FAA. Indeed, the text and history of the FAA make clear that Congress never intended for state policy judgments about what is substantively unfair to provide a ground for invalidating an otherwise proper arbitration clause. The Ninth Circuit's decision is wrong: state policy regarding the substantive unfairness of contracts that require resort to individual arbitration proceedings cannot trump federal policy embodied in the FAA.

The FAA provides that, as a matter of federal law, agreements to arbitrate are "valid, irrevocable, and enforceable . . . save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. As this Court has made abundantly clear, the "primary purpose" of the FAA is to "ensur[e] that private agreements to arbitrate are enforced according to their terms." *Volt Info.*

Sciences, Inc. v. Bd. of Trs., 489 U.S. 468, 479 (1989); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) (noting that the FAA reflects "a liberal federal policy favoring arbitration agreements").

California's categorical prohibition on individual arbitration provisions cannot be reconciled with the FAA's text or policy. The Ninth Circuit concluded otherwise, suggesting that the California courts had invoked general principles of contract law in holding that the use of individual arbitration provisions was substantively unconscionable. But that is the very reasoning the Third Circuit rejected in *Gay*: although the state court cases "are written ostensibly to apply general principles of contract law, they hold that an agreement to arbitrate may be unconscionable simply because it is an agreement to arbitrate." *Gay*, 511 F.3d at 395; *see also id.* (noting that the state court decisions impermissibly "rely on the uniqueness of an agreement to arbitrate as a basis for a state-law holding that enforcement would be unconscionable" (citation and internal quotation marks omitted)). As the Third Circuit recognized, the hostility to arbitration that the Ninth Circuit condoned is exactly what Congress prohibited when it passed the FAA. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-11 (1974); *see also Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626-627 (1985) ("[W]e are well past the time when judicial suspicion of the desirability of arbitration and of the competence of arbitral tribunals inhibited the development of

arbitration as an alternative means of dispute resolution.").

The Ninth Circuit's approach is, moreover, particularly misguided because the FAA forecloses *all* reliance on substantive unconscionability as a basis for invalidating an arbitration provision. Section 2 of the FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable" as a matter of federal law unless state law provides grounds for "revocation." 9 U.S.C. § 2. Given Section 2's distinctive use of "revocation," on the one hand, and "valid[ity]" and "enforce[ment]" on the other, it must be assumed that the terms have different meanings. *See Conn. Dep't of Income Maint. v. Heckler*, 471 U.S. 524, 530 n.15 (1985) ("It is a familiar principle of statutory construction that courts should give effect, if possible, to every word that Congress has used in a statute.").

In this instance, the term "revocation" in the savings clause must be read to provide a defense to defects in contract formation, not a license for a State's unbridled consideration of substantive unfairness. Thus understood, the FAA sensibly incorporates the criticism of the common-law reluctance to enforce contractual provisions that "oust the courts of their jurisdiction." *See* Wesley A. Sturges, *A Treatise on Commercial Arbitrations and Awards* § 15, at 45 (1930) (noting the common law rule); *see also Gilmer*, 500 U.S. at 24 (explaining that the purpose of the FAA "was to reverse the longstanding judicial hostility to arbitration

agreements that had existed at English common law and had been adopted by American courts").

That is, although many courts prior to the FAA had refused to enforce arbitration provisions, other courts had held that contracts to arbitrate should be enforced absent evidence that the agreement was "induced by fraud, or overreaching, or entered into unadvisedly through ignorance, folly or undue pressure" — *i.e.*, agreements to arbitrate should be enforced absent *procedural* unconscionability that calls into question the validity of their formation. *See* Sturges, *supra*, § 15, at 47 (quoting *President of Delaware & Hudson Canal Co. v. Pennsylvania Coal Co.*, 50 N.Y. 250 (1872)). It was this approach to arbitration agreements that the FAA made binding federal law. *Cf. Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281 (1995) ("What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The [FAA] makes any such state policy unlawful . . . ."); *Nat'l R.R. Passenger Corp. v. Consol. Rail Corp.*, 892 F.2d 1066, 1070 (D.C. Cir. 1990) ("[T]he language of [Section] 2 . . . indicates that Congress created an exception to the general rule (that an arbitration clause will be enforced by its terms) only when there is a flaw in the formation of the agreement to arbitrate."); *Supak & Sons Mfg. Co. v. Pervel Indus., Inc.*, 593 F.2d 135, 137 (4th Cir. 1979) (explaining that Section 2 preempts any law of judicial or statutory origin that "restrict[s] the validity or enforceability of arbitration agreements," but "does

not displace state law on the general principles governing formation of the contract itself").[2]

That is the only sensible reading of the Act. It would make little sense for Congress to guarantee that arbitration agreements "shall be valid, irrevocable, and enforceable" as a matter of substantive federal law, yet simultaneously permit the survival of state judicial or statutory law that relies on a distrust of arbitration to eliminate all of the substantive benefits that arbitration provides. *See Zuni Publ. Sch. Dist. No. 89 v. Dep't of Educ.*, 127 S. Ct. 1534, 1545 (2007) (explaining that a statute should be construed in accordance with its "basic purpose and history"); *see also Preston v. Ferrer*, No. 06-1643, 2008 WL 440670, at *1 (U.S. Feb. 20, 2008) (reaffirming that the FAA "establishes a national policy favoring arbitration when the parties contract for that mode of dispute resolution" and "calls for the application . . . of federal substantive law regarding arbitration").

In sum, the FAA precludes reliance on California's law of substantive unconscionability to nullify T-Mobile's agreement to arbitrate, and the

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[2] Neither *Perry v. Thomas*, 482 U.S. 483 (1987), nor *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996), is to the contrary. The Court in *Perry* expressly declined to address the unconscionability arguments raised in that case, *see* 482 U.S. at 492 n.9, and the Court in *Doctor's Associates* had its focus trained on procedural concerns, not substantive fairness, 517 U.S. at 687 & n.3. Indeed, this Court has never since the passage of the FAA upheld the invalidation of a contractual arbitration provision on the basis of state substantive unconscionability law.

Ninth Circuit was wrong to conclude otherwise. If the Ninth Circuit's decision below remains the law, Section 2's robust pronouncements regarding the enforcement of arbitration clauses will be rendered meaningless in a large swath of the Country.

II. The Court Should Grant Review Because the Ninth Circuit's Decision Will Have a Sweeping Negative Impact on the Wireless Communications Industry and Its Customers.

1. Although the Ninth Circuit addressed only T-Mobile's customer service agreement, the reach of its opinion is far broader. Verizon Wireless, Sprint Nextel, and many other CTIA members employ individual arbitration clauses akin to the one at issue here. There are more than 240 million mobile telephone subscribers nationwide, and the vast majority have contracts that rely on individual arbitration proceedings to resolve most customer claims.[3]

The "Customer Agreement" used by Verizon Wireless, for example, contains a "Dispute Resolution and Mandatory Arbitration" section that provides as follows:

> EXCEPT FOR QUALIFYING SMALL CLAIMS COURT CASES, ANY CONTROVERSY OR CLAIM ARISING OUT

[3] Analogous provisions are common in other industries as well. *See, e.g.*, *Discover Bank v. Super. Ct.*, 113 P.3d 1100, 1103 (Cal. 2005) (examining individual arbitration clause in bank's cardholder agreement).

> OF OR RELATING TO THIS AGREEMENT, . . . OR ANY PRODUCT OR SERVICE PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT . . . , OR ANY ADVERTISING FOR SUCH PRODUCTS OR SERVICES, WILL BE SETTLED BY ONE OR MORE NEUTRAL ARBITRATORS BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR BETTER BUSINESS BUREAU ("BBB").

Verizon Wireless, Customer Agreement, http://www.verizonwireless.com/b2c/index.html (follow "Customer Agreement" hyperlink) (last visited Feb. 22, 2008). In addition, it limits the availability of class relief, stating **"THIS AGREEMENT DOESN'T PERMIT CLASS ARBITRATIONS EVEN IF [ARBITRATION] PROCEDURES OR RULES WOULD. . . . IF FOR SOME REASON THE PROHIBITION ON CLASS ARBITRATIONS . . . IS DEEMED UNENFORCEABLE, THEN THE AGREEMENT TO ARBITRATE WILL NOT APPLY."** *Id.*

Likewise, the **"DISPUTE RESOLUTION"** section of the "Terms & Conditions" used by Sprint Nextel provides that: "We each agree to finally settle all disputes [except those brought in small claims court or before a government agency] only by arbitration." Sprint Nextel, Terms & Conditions, http://nextelonline.nextel.com/en/legal/legal_terms_privacy_popup.shtml (last visited Feb. 22, 2008). It goes on to limit class relief as follows:

> We each agree not to pursue arbitration on a classwide basis. We each agree that any arbitration will be solely between you and us (not brought on behalf of or together with another individual's claim). If for any reason any court or arbitrator holds that this restriction is unconscionable or unenforceable, then our agreement to arbitrate doesn't apply and the dispute must be brought in court. . . . TO THE EXTENT ALLOWED BY LAW, WE EACH WAIVE ANY RIGHT TO PURSUE DISPUTES ON A CLASSWIDE BASIS; THAT IS, TO EITHER JOIN A CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY, OR ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING.

Id.

The harm caused by the Ninth Circuit's decision is thus truly industry-wide and nation-wide, as carriers across the country face substantial uncertainty as to the enforceability of critical provisions of hundreds of millions of customer contracts. The very breadth of the Ninth Circuit's ruling is a powerful reason for this Court's review.

2. The Ninth Circuit's sweeping decision also merits review because it is certain to generate substantial volumes of costly and entirely unnecessary litigation. First, wireless carriers no longer know the preemptive scope of the FAA. It is

bad enough that carriers are now subject to unconscionability analysis that varies from State to State within the Ninth Circuit. *See, e.g.*, *Lowden v. T-Mobile USA, Inc.*, 512 F.3d 1213, 1221 (9th Cir. 2008) (holding that the FAA does not preempt Washington's law of unconscionability). But carriers now face additional uncertainty: outside the Ninth and Third Circuits, they do not even know whether federal law or state law will govern the validity of their individual arbitration clauses, much less how individual States will resolve challenges to those provisions on the merits. Without this Court's intervention, carriers will have to litigate — Circuit by Circuit and State by State — simply to determine applicable law.

Second, in jurisdictions (such as California and Washington) in which state law governs and forbids resort to individual arbitration proceedings under the FAA, CTIA members will be forced into lengthy and costly class action litigation, thus losing the well-recognized benefits of arbitration. *See, e.g.*, H.R. Rep. No. 97-542, at 13 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 765, 777 ("The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; it is often more flexible in regard to scheduling of times and places of hearings and discovery devices . . . .").

Worse, many of the class claims are baseless, making the costs of forced class litigation a

particularly bitter pill to swallow. The instant litigation makes that all too clear. Respondents contend that T-Mobile's advertising was misleading because it advertised cell phones as free or heavily discounted, but did not disclose that sales tax would be calculated on the full retail price. Yet, it was California law that required sales tax to be calculated on the unbundled price of the phone, *see* Cal. Code Regs. tit. 18, § 1585(b)(3), and plaintiff Laster does not contest that her receipt set forth the $28.22 sales tax accurately and even indicated that "[b]y law, some states impose a tax based on the retail price or cost of our product instead of the discounted price." First. Am. Compl., *Laster v. T-Mobile USA, Inc.*, No. 05-1167 ¶ 23 (S.D. Cal. filed Aug. 12, 2005); Pet. App. 9a. Over two and a half years later, this meritless litigation continues.

Unfortunately, T-Mobile's experience is by no means unique. Verizon Wireless, for example, currently faces claims challenging the imposition of a small administrative charge that was authorized under plaintiffs' contracts with Verizon, and for which plaintiffs received advance notification. *See generally Litman v. Cellco Partnership*, No. 07-4886 (D.N.J.). That case, which was commenced prior to the Third Circuit's decision in *Gay*, has subjected Verizon Wireless to months of litigation in federal court that its individual arbitration provision was designed to avoid. *See Preston*, 2008 WL 440670, at *2 (recognizing that arbitration "long delayed [is] in contravention of Congress' intent").

Similarly, in *Meinhold v. Sprint Spectrum, L.P.*, No. 07-0456, 2007 WL 2904003 (E.D. Cal. Oct. 2, 2007), plaintiff brought a class action claiming that she had relied on certain representations by Sprint, even though (as soon became clear) she had never seen, much less relied upon, the alleged misrepresentations before changing her position. *Id.* at *4-*5. The district court ultimately dismissed her class action allegations and remanded her individual claims to state court, but not before Sprint was forced to endure months of litigation. *Id.* at *5; *see also Meinhold v. Sprint Spectrum L.P.*, No. 07-0456, 2007 WL 1456141, at *6 (E.D. Cal. May 16, 2007) (granting motion to dismiss with leave to amend).

In the wake of the Ninth Circuit's decision, such costly and meritless litigation is certain to multiply.

3. That increase in litigation, unwelcome generally, is particularly so here, given the competitive conditions in which wireless carriers operate. As the Federal Communications Commission recently confirmed, "competition in mobile telecommunications markets is flourishing," to the benefit of the industry's more than 240 million subscribers. *In re Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 08-28, WT Docket No. 07-71 ¶¶ 290-291 (Feb. 4, 2008). As their use of mobile phones continues to grow in response to "[r]elatively low prices," wireless communications customers benefit from improved call quality and experience better customer care performance. *See id.* ¶¶ 225, 290.

In such a competitive industry, "churn" — "the percentage of current customers an operator loses over a given period of time" — is a major concern. *Id.* ¶¶ 186-187. By increasing customer loyalty (that is, reducing churn), wireless carriers increase their profits, as well as the rate at which their revenues accrue. *Id.* ¶ 187. Wireless carriers therefore have every incentive to keep their customers happy.

Service quality and price are vital to attracting and retaining customers. *Id.* ¶ 188. Resolving customer disputes via individual arbitration proceedings is the mechanism the market has adopted to maintain customer satisfaction while keeping costs low. Most small claims are resolved at the customer service level, *cf. Ting v. AT&T*, 182 F. Supp. 2d 902, 917 (N.D. Cal. 2002) (finding it "unlikely that the typical customer dispute about service or under $1000 will be resolved through arbitration; it most likely will be resolved by [defendant]'s customer care representatives or their supervisors"), *aff'd in part & rev'd in part*, 319 F.3d 1126 (9th Cir. 2003), and, when claims do result in individual arbitration, most customers are satisfied with the process, *see, e.g.*, Kirk D. Jensen, *Can Financial Institutions Be Required to Arbitrate on a Class-Wide Basis Notwithstanding Provisions That Prohibit Class Arbitration?*, 122 Banking L.J. 328, 336 (2005) ("[S]tudies have shown that individuals believe they are treated fairly in arbitration."); Harris Interactive, *Arbitration: Simpler Cheaper, and Faster Than Litigation* 5 (Apr. 2005) (conducted for U.S. Chamber Institute for Legal Reform, Apr. 2005), available at

http://www.instituteforlegalreform.com/issues/docload.cfm?docId=489 ("Most participants are very satisfied with the arbitrators' performance, the confidentiality of the process and its length."); *see also Allied-Bruce*, 513 U.S. at 280 ("[A]rbitration's advantages often would seem helpful to individuals . . . complaining about a product, who need a less expensive alternative to litigation."); Fed. Trade Comm'n, *Resolving Consumer Disputes: Mediation and Arbitration* (Aug. 1998), http://www.ftc.gov/bcp/edu/pubs/consumer/general/gen05.shtm (informing consumers that arbitration "can be quicker, cheaper, and less stressful than going to court").

The Ninth Circuit's decision displaces the efficient market solution reached by the carriers and their customers, replacing it with a far more costly method for resolving complaints. And given the competitive conditions that drive the wireless industry to provide better service at lower prices, the beneficiaries of the Ninth Circuit's largesse are certainly not consumers, who have indicated no desire to pay higher fees for the ability to air minor complaints through class actions. Instead, the principal beneficiaries are the legions of plaintiffs' lawyers eager for class action fees.

4. The Ninth Circuit's intervention is particularly unfortunate because robust competition in the wireless industry has resulted in arbitration clauses that are fully protective of consumers. CTIA members' arbitration clauses, for example, allow customers to pursue claims in small claims court,

provide for arbitration fee sharing, and permit a prevailing plaintiff to recover attorneys' fees.

Such arbitration clauses provide ample avenues for customers to seek relief, particularly because, as elsewhere, lawyers will likely remain willing to pursue claims where "[a]ttorneys' fees are recoverable." *Johnson v. W. Suburban Bank*, 225 F.3d 366, 374 (3d Cir. 2000); *see Snowden v. CheckPoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002) (rejecting argument that individual arbitration provision was unconscionable where prevailing plaintiff could recover attorneys' fees); *see also Gilmer*, 500 U.S. at 32 (noting adequacy of individual arbitration where alternate enforcement mechanisms were available); Jensen, *supra*, at 337 ("[E]mpirical evidence indicates that individual arbitration provides manifold benefits to consumers.").

Arbitration clauses such as those used by CTIA members thus do not threaten to "insulate a party from liability that otherwise would be imposed." *Discover Bank v. Super. Ct.*, 113 P.3d 1100, 1109 (Cal. 2005). To the contrary, they provide cost-effective, easy-to-navigate dispute resolution mechanisms that help customers and carriers alike. *See id.* at 1121 (Baxter, J., concurring and dissenting) (observing that "the majority exaggerates the difficulty of pursuing modest claims where class treatment is unavailable and overlooks the many other means by which [the defendant] could be called to account for [its alleged conduct]"). The Ninth Circuit's decision to permit California to categorically

foreclose such mechanisms merits this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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